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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 251

JAMES STEWART & CO., INC.,

Appellant,

vs.

KATHERINE SADRAKULA, AS ADMINISTRATRIX OF THE GOODS, CHATTELS AND CREDITS WHICH WERE OF NICHOLAS SADRAKULA, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

LEO FIXLER,
Counsel for Appellee.

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Preliminary Statement

Appellee is the widow of one Nicholas Sadrakula, who died on October 24, 1935, as a result of injuries sustained that day when he fell from the first to the basement floor while working as a rigger in connection with the construction of a Post Office Building in the City of New York.

Appellant was the general contractor, under an agreement with the Treasury Department dated November 9, 1934 (R.* 121). Decedent's employer, a sub-contractor, (Ex. "3", R. 118) undertook to install certain hoisting equipment.

The steel construction had been fully completed and decedent was supervising the installation of guide rails in a "bay" designated by the appellant. By a "bay" was meant the area between four upright steel columns, being 30′ long and 20′ wide. The "bay" was divided by two parallel cross girders thus creating three equal panels 30′ long and 6⅔′ wide.

It was within the center panel that the rails had been installed for the purpose of guiding the "bucket" in ascent and descent to various floors in the building.

The actual space reasonably required for the installation of the guide rails and the bucket was less than 60 square inches.

The photographs (Ex. 1 and 2, R. 116, 117) show the guide rails and the bucket within the center panel of the bay.

In looking at the photographs, North is to the left and South to the right. The nearer guide rail was called the "west rail".

Appellant conceded that at no time did it attempt to plank over any part of the bay and the area to the west of the guide rails was unguarded.

The evidence established that Sadrakula fell backwards through this unguarded space. To the absence of the planking required by Section 241 subd. 4 of the Labor Law,[1] his death was attributed. (Decision by Mr. Justice Lewis, R. 122.)

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*All references are to pages of the printed case on appeal in the Court of Appeals, which appellant is filing with the Clerk of this Court.

[1] Appendix, p. 15.

Upon the trial, appellant rested at the end of appellee's proof. The jury was waived and the Court found for appellee. That determination has been unanimously affirmed by the Appellate Division of the New York Supreme Court and the Court of Appeals.

The basis of the present appeal rests upon the contention of appellant, as certified below, that a Federal question was necessarily passed upon.

In answer to all of appellant's contentions, appellee respectfully submits a statement of matter and grounds making against the jurisdiction of the United States Supreme Court as follows:

I

There is no Federal Question Involved.

The jurisdiction of this Honorable Court to entertain this appeal exists only if a Federal question is apparent from the record.

Mellon v. *O'Neill*, 275 U. S. 212, 72 L. Ed. 245.

It cannot be supplied by an assignment of errors.

Chapin v. *Fye*, 179 U. S. 127, 45 L. Ed. 119.

Appellee contends that there is no Federal question involved because although the United States purchased the enclave before decedent met his death, it did not obtain "exclusive jurisdiction" thereof, until several months later. (R. Stipulation pgs. 17 & 18).

By this stipulation (supra) it was agreed that the United States purchased the property in 1931 and filed certified copies of the record or transfer of the property, in the office of the Secretary of State on December 26th, 1935 (R. 17, 18).

Decedent met his death on October 24th, 1935 (R. 18).

Appellant states "exclusive jurisdiction thereof was ceded to the United States by Consolidated Laws, Chapter 57, Section 50, 53 (State Law, Secs. 50, 53)".

We do not know why it omitted Section 52 of the same law because it is only by reason thereof that "exclusive jurisdiction" was ceded. As the enclave in question was also within the confines of the City of New York, Secs. 210, 211 and 212 of the General Municipal Law (Consolidated Laws of 1909, Chap. 29)[2] also apply. Both Sec. 52 of the State Law and Sec. 211 of the General Municipal Law, provides that "exclusive jurisdiction" is ceded by the State to the United States upon the filing of certified copies of the record or transfer with the Secretary of the State of New York.

The stipulation (R. 18) follows the language of Sec. 211 of the General Municipal Law and it appears therefrom that such filing did not take place until two months after decedent's death.

Statutes relinquishing jurisdiction are strictly construed since it is of the greatest importance to both national and state governments.

Larson v. *South Dakota*, 278 U. S. 429, 73 L. Ed. 441.

When land is ceded by a State to the United States, the extent of Federal jurisdiction depends upon the terms of the act of cession.

Atkinson v. *State Tax Commission*, 62 P. (2nd) 13, aff'd. 303 U. S. 20, 82 L. Ed. (adv.) 440.

Silas Mason Co. v. *Tax Commission of Washington*, 302 U. S. 186, 82 L. Ed. (adv.) 154, 159.

Ft. Leavenworth Ry. Co. v. *Lowe*, 114 U. S. 525, 537.

Although appellant omits any discussion of this point, it is well aware of its significance because at page 10 of its brief, under sub. "F." it says:

> "The decisions of the State Courts do not rest upon the ground that exclusive jurisdiction of the enclave

[2] Appendix, p. 15.

had not, in fact, been ceded before the accident and before the execution of appellant's contract with the United States, but are placed entirely upon the ground that the State Statutes continued to apply *after* such cession, because the Congress had not 'displaced' it".

This observation is true as to the determination of the Appellate Division, but is not so as to the decision of the Trial Court (R. 122).

There is but one conclusion however, that can be drawn from the record and that is that the United States did not obtain exclusive jurisdiction over the enclave until after the accident and more than one year after appellant received its contract from the Treasury Department.

There is therefore no Federal question involved authorizing review by this Honorable Court.

II

There is no Substantial Federal Question Involved.

The Court of Appeals did certify that a Federal question was necessarily passed upon by it but that of course is not binding upon this Honorable Court.

Alexander v. *Movietone News*, 273 N. Y. 511; certiorari denied 301 U. S. 702, 81 L. Ed. 1357.

Honeyman v. *Hanan*, 300 U. S. 14, appeal dismissed 302 U. S. 375.

Upon the trial the jury was waived and questions of law and fact were submitted to the Court (R. 114).

Appellant's motion to dismiss was based upon the ground that the provisions of the Labor Law were not applicable to the place of the accident because they were repugnant to Article I, Sec. 8 of the United States Constitution (R. 112 and 113).

The Learned Trial Justice in deciding in appellee's favor stated in part: (R. 122)

"The proximate cause of the accident which occasioned decedent's death was the failure of the defendant to thoroughly plank over the beams as required by Sec. 241, sub. 4 of the Labor Law".[3]

Whether this conclusion was arrived at because the United States did or did not have jurisdiction, does not appear.

It is appellant's contention that the record supports the view that jurisdiction was in the State of New York at the time.

However, from a legal standpoint, it is immaterial whether the State or the United States had jurisdiction because in either event the State Labor Laws were applicable.

Such is the law as established by this Honorable Court and confirmed by the Act of Congress of Feb. 1st, 1928, 45 Stat. 54 (16 U. S. C. A. Sec. 457).[4]

1. *Murray* v. *Joe Gerrick & Co., Inc.*, 291 U. S. 315; 78 L. Ed. 821.
2. *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439.
3. *Vilas* v. *Manilla*, 220 U. S. 345.
4. *Western Union Tel. Co.* v. *Chiles*, 214 U. S. 274.
5. *Barrett* v. *Palmer*, 135 N. Y. 336, aff'd 162 U. S. 399.
6. *Chicago, Rock Island & Pac. R. R. Co.* v. *McGlinn*, 114 U. S. 542, 546.
7. *Ft. Leavenworth Ry. Co.* v. *Lowe*, 114 U. S. 525, 539.

The unanimous affirmance of the Appellate Division of the Supreme Court (R. 131), was likewise unanimously affirmed by the Court of Appeals (220 N. Y. —, 20 N. E. 2d 1015).

The Appellate Division based its determination upon the case of *Kaufman* v. *Hopper*, 220 N. Y. 184. In that case,

[3] Appendix, p. 15.
[4] Appendix, p. 16.

at page 187, the late Mr. Justice Cardozo, writing the opinion for the Court of Appeals stated:

> "The common law and statutes passed before the Act of Cession remain in force in the ceded territory until displaced by Congress (McCarthy *v.* Packard Co., 105 A. D. 436, aff'd on opinion below, 182 N. Y. 555; Barrett *v.* Palmer, 135 N. Y. 336), but later statutes are of no effect. This is now the settled rule. (Farley *v.* Scherno, 208 N. Y. 269; Ft. Leavenworth R. R. Co. *v.* Lowe, 114 U. S. 525, 537; W. U. Tel. Co. *v.* Chiles, 214 U. S. 274.)"

Barrett v. *Palmer*, 135 N. Y. 336, was affirmed by this Court in 162 U. S. 399, upon the authority of the oft cited case of *Chicago, Rock Island & Pacific R. R. Co.* v. *McGlinn*, 114 U. S. 542.

As was done in *Barrett* v. *Palmer* (*supra*), we respectfully quote from the learned opinion of Mr. Justice Field in the *McGlinn* case, at page 546:

> "It is a general rule of public law recognized and acted upon by the United States that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, *i. e.*, the laws which are intended for the protection of private rights, continue in force until abrogated by the new government or sovereign."

The Labor Law clearly falls within this definition. *Steele* v. *Halligan*, 229 Fed. 1011 (Wash.).

It was intended for the protection of employees. It defines the obligations of a general contractor to all workmen engaged in the construction of buildings within the State.

Its violation may be shown as evidence of negligence in an action against a contractor who fails to comply there-

with. Such is the construction which has been placed thereon by the New York State courts.

Drummond v. *Norton*, 156 A. D. 126, aff'd 213 N. Y. 670;
Bohnhoff v. *Fischer*, 210 N. Y. 172.

This Court will not interfere with a State's construction of its own statutes.

Coombs v. *Getz*, 285 U. S. 434;
Price v. *Illinois*, 238 U. S. 446;
Brinkerhoff-Faris Trust & Savings Co. v. *Hill*, 281 U. S. 673.

Even if it be assumed that "exclusive jurisdiction" was vested in the United States at the time of the accident the provisions of the State Labor Law would nevertheless apply, since they were in force at the time of the cession and were never displaced by Congress. Therefore no Federal question of substance is involved.

Any doubt about the application of the existing laws of the State to the enclave, was removed by the Act of February 1st, 1928, 45 Stat. 54 (16 U. S. C. A., S. 457).[5]

Appellee's cause of action is derived from the Consolidated Laws of 1920, Chap. 919, Sec. 130 (Decedent's Estate Law, Sec. 130). In so far as it is relevant, it provides:

> "The * * * administrator duly appointed in this State (N. Y.) * * * of a decedent who has left him * * * surviving, a * * * wife * * * may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person, who, or a corporation which, would have been liable to an action in favor of a decedent by reason thereof if death had not ensued * * *."

No question is raised by appellant as to the validity, or application of this statute, for it falls clearly within the con-

[5] Appendix, p. 16.

temiplation of the Act of February 1st, 1928 (*Murray* v. *Joe Gerrick & Co., Inc.*, 291 U. S. 315).

The error assigned is that Sec. 241, sub. 4, of the Labor Law,[6] was erroneously applied. Appellant does not question its validity but rather the propriety of its application to the ceded property over which it claims the United States had "exclusive jurisdiction".

This provision of the Labor Law does not create a cause of action. It prescribes a protective measure, the violation of which constitutes some evidence of negligence, in an action for personal injuries or as in the instant case, an action for wrongful death under Sec. 130 of the Decedent's Estate Law.

Schmidt v. *Merchants Dispatch Transp. Co.*, 270 N. Y. 287.

As such it became part of the law of negligence in existence in the enclave at the time of the cession and continued in force and effect since Congress failed to enact any law to supersede it.

Steele v. *Halligan*, 229 Fed. 1011.

Appellant also contends that as applied in the instant case, the Labor Law imposed a burden upon the work which it was performing for the United States in that the enforcement thereof would constitute an interference with the exercise by the Federal Government of its functions.

That contention, as we see it, can only refer to the requirement of the Labor Law that open steel work be thoroughly planked over (Sec. 241, subd. 4).[7]

Such provision is not directed to the United States, its property or officers. It is not directed to an instrumentality of the government. Appellant is an independent contractor.

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[6] Appendix, p. 15.
[7] Appendix, p. 15.

The provisions of the Labor Law certainly do not restrict the operation or conduct of a post office.

At most, the law prescribes a method of construction which might increase the cost to the contractor, if complied therewith, and so reduce his profit. That it might indirectly increase the cost to the United States is the only possible burden we can see.

That such a contention is without merit was decided in *Alward* v. *Johnson*, 282 U. S. 509, 75 L. Ed. 496. This view was recently approved by this Court in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 82 L. Ed. 155, wherein Mr. Chief Justice Hughes, in discussing the *Alward* case, said in substance; that the argument that the cost to the Federal Government of the carriage of mails might be increased, did not impress the Court as militating against the law's validity.

The rejection of such contention by the Court below was clearly in accordance with these authorities.

Whether State officers could compel compliance with the Labor Law provisions is not a question before us as we are concerned solely with the civil aspects of the law.

It follows that even if it be assumed that the United States did have "exclusive jurisdiction" over the ceded property, the labor law was nevertheless properly held applicable since in no way was it repugnant to the Federal Constitution. The absence of a substantial Federal question therefore requires a dismissal.

Ralph Sollett & Sons, Construction Co. v. *Commonwealth of Virginia*, appeal dismissed, April 2, 1934. 292 U. S. 599; 78 L. Ed. 1463, for want of a substantial Federal question. (As in the instant case the appellant therein urged that the State statute was of no effect because it sought to extend the state's jurisdiction over property where the Federal government had exclusive legislative jurisdiction, pursuant to Article 1, Sec. 8, Clause 17, U. S. Constitution.)

Seaboard Air Line R. Co. v. *Watson*, 287 U. S. 86, 77 L. Ed. 180.

Roe v. *Kansas*, 278 U. S. 191, 73 L. Ed. 259.

III.

Answering Appellant's Assignment of Errors.

In discussing the jurisdiction of this Honorable Court to hear this appeal, we have answered appellant's assignment of errors numbered 1, 2, and 3 since they concern themselves with the application of the Labor Law to the enclave where decedent met his death.

In item 4, appellant contends that the State Court erred in holding that appellant violated Section 241, sub. 4 of the Labor Law. That issue was one of fact for the trial court (the jury having been waived) and this Honorable Court will not review the weight of evidence.

Aetna Life Ins. Co. v. *Dunken*, 266 U. S. 389, 394, 69 L. Ed. 342, 347.

Fiske v. *Kansas*. 274 U. S. 380, 385, 71 L. Ed. 1108, 1110.

As to item 5, appellant charges error in the holding that decedent's death was caused by a violation of Sec. 241, sub. 4 of the Labor Law.

This, too, was one of the issues of fact for the trial court and involved the construction and interpretation of the section.

As we have stated above, this Honorable Court will not interfere with a State Court's construction of its own statute.

Coombs v. *Getz*, 285 U. S. 434.

Price v. *Illinois*, 238 U. S. 446.

Brinkerhoff-Faris Trust & Savings Co. v. *Hill*, 281 U. S. 673, 680, 74 L. Ed. 1107.

Its item "6" concerns the exclusion from evidence of its Exhibit "A" for identification, part of its contract with the Treasury Department (R. 121).

Appellant contends that by this Contract the Treasury Department relieved it from complying with the Labor Law provisions.

Under the Constitution, Article I, Section 8, Clause 1, 7, 17, 18 only Congress is vested with the power to enact laws. Admittedly its only relevant enactment was that of February 1, 1928 (16 U. S. C. A. 457), 45 Stat. 54.

To accept appellant's argument, would mean that the Treasury Department by contract or regulation could remove the legal effect of an Act of Congress.

The executive departments are neither judicial nor quasi-judicial in character and their actions, while binding on each other, are not binding on the Courts.

Alire v. *U. S.*, 1 Ct. of Claims, 233, reversed on other grounds, *U. S.* v. *Alire*, 6 Wall. 573, 18 L. Ed. 947.

The power conferred upon executive heads of such departments, is administrative, not legislative.

U. S. v. *George*, 228 U. S. 14, 57 L. Ed. 712.

Regulations by an executive, must be consistent with law. They may not be extended so as to alter, amend or defeat a law already enacted by Congress. Where rights, duties and obligations are defined by statute, they cannot be taken away or abridged by the regulations of an executive department.

Campbell v. *U. S.*, 107 U. S. 407, 27 L. Ed. 592.
Morrill v. *Jones*, 106 U. S. 466, 27 L. Ed. 267.

The legislative power vested in Congress cannot be abdicated or transferred to others.

Panama Refining Co. v. *Ryan*, 55 S. Ct. 241.

U. S. v. *Tishman*, 99 F. (2d) 951, certiorari denied 59 S. Ct. 485.

Curran v. *Wallace*, 59 S. Ct. 379.

The Treasury Department was without authority to grant such immunity to appellant, even if it intended to do so.

Panama Refining Co. v. *Ryan*, 55 S. Ct. 241.

Sawyer v. *U. S.*, 10 F. (2d) 416, 420.

Particularly is this true when the contract or regulation is in conflict with express statutory provision.

Maryland Casualty Co. v. *U. S.*, 251 U. S. 342, 349.

Besides the fact that decedent was not bound by a contract to which he was not a party, it follows from the foregoing that the Treasury Department was without authority to grant any immunity to appellant from the provisions of the Labor Law.

Even if it were so empowered there is nothing contained in the contract from which it can reasonably be said it intended to do so.

The proffered sections insofar as relevant are:

SEC. 21. Protection of Public and Property (R. 121):

> "The contractor shall * * * comply with all Municipal ordinances which apply to the use of sidewalks and streets or alleys for building operations, but such ordinances do not apply inside of the lot lines. He shall be held responsible for any damage or injury to persons or property which may occur as a result of his fault or negligence in the prosecution of the work."

SEC. 22. Permits:

> "The contractor shall without additional expense to the Government obtain all required licenses, permits, etc. This applies to work outside the lot lines, the use of streets and sidewalks, the protection of public and

traffic, connections to utility service lines, etc. State or Municipal Building Regulations do not apply to work inside the Government's lot lines."

A reasonable interpretation of Sec. 21 is that those Municipal Ordinances which applied to the use of sidewalks and streets or alleys for building operations, were not to apply inside of the lot lines.

Sec. 22, as its heading indicates, refers to permit requirements outside the lot lines in the use of streets and sidewalks, etc. State or Municipal Building regulations requiring permits inside the lot lines were referred to and not the Labor Law provisions.

It is thus evident that not only was the Treasury Department without power to grant immunity to appellant from the Labor Law provisions but in fact, it did not do so.

Appellee concludes by respectfully urging that because of all the foregoing, this appeal be dismissed and the judgment of the Court below be affirmed.

Deming v. *Carlisle Packing Co.*, 226 U. S. 102, 57 L. Ed. 140.

Milheim v. *Moffat Tunnel Imp. Dist.*, 262 U. S. 710, 67 L. Ed. 1194.

Leo Fixler,
Counsel for Appellee.

APPENDIX.

LABOR LAW OF THE STATE OF NEW YORK, Section 241, subdivision 4 (Consolidated Laws of New York, Chapter 31, Section 241).

"PROTECTION OF EMPLOYEES ON BUILDING CONSTRUCTION OR DEMOLITION WORK. All contractors and owners, when constructing or demolishing buildings, shall comply with the following requirements: * * *

4. If the floor beams are of iron or steel, the entire tier of iron or steel beams on which the structural iron or steel work is being erected shall be thoroughly planked over to not less than six feet beyond such beams, except spaces reasonably required for proper construction of the iron or steel work, for raising or lowering of material or for stairways and elevator shafts designated by the plans and specifications."

GENERAL MUNICIPAL LAW OF THE STATE OF NEW YORK, Section 211 (Consolidated Laws of 1909, Chapter 29).

"Section 211. CERTIFIED COPY OF TRANSFER TO BE FILED. Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed and recorded in the office of the secretary of state of this state, certified copies of the record or transfer to the United States of any such pieces of land which had been acquired by the United States for the purposes specified in section two hundred and ten of this article, together with maps and descriptions of such lands by metes and bounds, exclusive jurisdiction, except as provided in section two hundred and twelve, is thereupon ceded to the United States over the lands so described, during the time that the United States shall be or remain the owner thereof".

ACT OF CONGRESS of FEBRUARY 1st, 1928, 45 STAT. 54 (16 U. S. C. A., Section 457).

"*Action for death or personal injury within national park or other place under jurisdiction of United States; application of state law.* In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any state, such right of action shall exist as though the place were under the jurisdiction of the state within whose exterior boundaries such place may be; * * *."